

## **REMARKS**

Claims 1-50 are pending in the present application. Claims 1-50 were rejected; and claims 1, 8, 17, 18, 19, 26, 35, and 42 were amended. Reconsideration of the claims is respectfully requested.

Amendments were made to the specification to provide serial numbers of co-pending related applications.

Claims 1, 8, 17, 18, 19, 26, 35, and 42 were amended to better recite the subject matter which applicants regard as the invention. Particularly, claims 1, 8, 17, 18, 19, 26, 35, and 42 were amended to specify that the meta data describes associations between files and applications that have accessed the files (See subject application, Page 13, Lines 7-9, and Page 16, Line 20-Page 17, Line 2; and Figure 5). No new matter has been introduced by the amendments to claims 1, 8, 17, 18, 19, 26, 35, and 42.

Also, applicants have submitted proposed corrections to the drawing labeled FIGURE 15 in red ink. The proposed correction to Figure 15 replaces "RECEIVE" with "REQUEST" in step 1500 as described on page 21, lines 8-9 of the specification. These changes will be incorporated into a formal set of drawings upon approval of the proposed changes by the examiner. No new matter is introduced by the proposed correction to Figure 15.

### **I. 35 U.S.C. § 102, Anticipation**

The Office Action has rejected claims 1-6, 8-24, 26-40, and 42-50 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,714,952 to Dunham et al. (hereinafter Dunham). This rejection is respectfully traversed.

With respect to this rejection, a prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218,

U.S.P.Q. 781 (Fed. Cir. 1983). In this particular case, each and every feature of the presently claimed invention is not identically shown or described in Dunham, arranged as they are in the claims.

For example, amended claim 1 recites the following:

1. A method in a data processing system for migrating an application from a source data processing system to a destination data processing system, the method comprising:
  - querying a data store containing meta data regarding files associated with the application, wherein the meta data describes associations between the files and applications that have accessed the files;
  - receiving a result in response to querying the data store; and
  - initiating copying of the files from the source data processing system to the destination data processing system using the result.

With regard to claim 1, the Office Action states the following:

- As per claim 1, a method in a data processing system for migrating an application from a source data processing system to a destination data processing system (col. 2, lines 55-64), the method comprising:
- querying a data store containing meta data regarding files associated with the application (col. 2, lines 39-43, col. 3, lines 7-17, col. 5, lines 63-67), wherein the data store includes meta data describing the files accessed by the application (col. 5, lines 21-25, col. 6, lines 50-56, col. 7, lines 11-15, Fig. 1-2);
  - receiving a result in response to querying the data store (col. 7, lines 39-49, lines 58-60); and initiating copying of the files from the source data processing system to the destination data processing system using the result (col. 2, lines 48-51, col. 8, lines 1-3).

Office Action dated 10/05/2004, Page 6

Applicants respectfully disagree. Dunham neither describes or suggests querying a data store containing meta data that describes "associations between the files and applications that have accessed the files." For example, the passages of Dunham recited by the examiner as describing meta data that is queried are as follows:

A file server obtains each of the one or more metadata files. In response to the request, the one or more metadata files are provided to said client in a single response.

Dunham, Column 2, Lines 39-43

A file server system provides data to be backed up to the backup computer system. A metadata service included in the file server system responds using remote procedure calls to requests from the backup agent for metadata. The

metadata service provides at least two metadata files for a data file being backed up as a parameter included in a first of the remote procedure calls. Each of the two metadata files includes *file attributes corresponding to a different file system* used by one of the at least two computer systems. A network connection between the backup agent and the metadata service transmits the at least two metadata files. (*Emphasis added*).

Dunham, Column 3, Lines 7-17

The catalogue 32 is generally a description of the various files and associated attributes or metadata for each of the files included in backup storage devices 22a and 22b. Generally, the catalogue 32 may include, for example, different file names by which a single set of file data may be...

Dunham, Column 5, Lines 63-67

Thus, Dunham only describes the metadata as describing file attributes of different file systems. Dunham in no manner describes or suggests metadata that describes "associations between the files and applications that have accessed the files." Moreover, Dunham recites the following regarding the metadata that is requested from the backup agent:

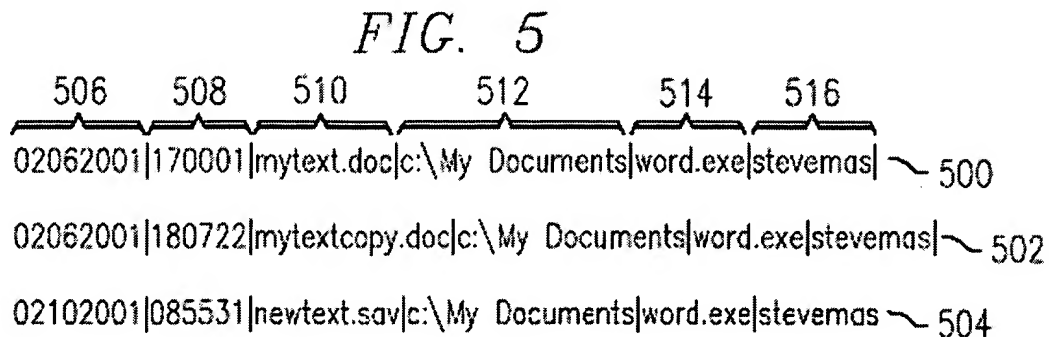
Generally, metadata describes one point of view or interpretation of file data in accordance with, for example, one particular file system. Metadata includes file attributes describing a particular set of file data. Examples of metadata may include, for example, file size, record size, date information, edit history or modification information associated with the file data, and user access information.

Dunham, Column 2, Lines 17-24

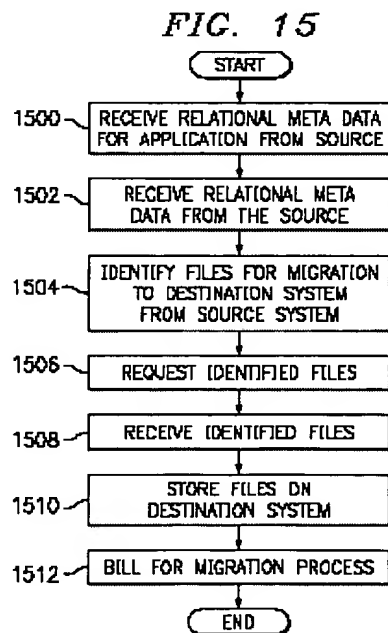
Thus, Dunham explicitly describes the metadata as describing an "interpretation of file data" according to a "particular file system." Dunham in no manner describes, suggests or otherwise alludes to metadata that describes "associations between the files and applications that have accessed the files" as described in the subject application and recited in amended claim 1, and thus fails to describe or suggest the method step of "querying a data store containing meta data" that describes "associations between the files and applications that have accessed the files.

As described in the present application, a relationship is defined between an application and a data file when an application requests access to the file. A driver is used to intercept file access requests and an association between the application that issued the file access request, and the data file is created and

stored in a database that can subsequently be accessed. For example, Figure 5 of the subject application shows the following:



As can be seen, metadata comprising records (500-504) describes an association between applications and data that has been accessed by the application. (See subject application, Page 13, Lines 7-9, and Page 16, Line 20-Page 17, Line 2). A file name and an application that has accessed the file are both defined in the association described by the metadata (See sections 510 and 514 of the metadata depicted in Figure 5). The relational metadata that defines associations between an application and files is queried to facilitate migrating an application from one system to another. For example, Figure 15 of the subject application shows the following:



As can be seen, relational metadata for an application is requested for an application from a source and on receipt of the metadata, files are identified and migrated to a destination system (steps 1500, 1502, and 1508). Thus, files associated with a particular application that is to be migrated are identified by the file and application association described by the meta data.

Independent claims 8, 14, 17-19, 26, 32, 35, 42, and 48 recite similar features as amended claim 1 and were rejected for similar rationale. Therefore, the same distinctions between Dunham and the claimed invention in claim 1 apply for these claims. For the reasons described above, Dunham does not contain all elements of independent claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48. Hence, Dunham fails to anticipate the present invention as recited in claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48. Since claims 2-6 depend from claim 1, claims 9-13 depend from claim 8, claims 15-16 depend from claim 14, claims 20-24 depend from claim 19, claims 27-31 depend from claim 26, claims 33-34 depend from claim 32, claims 36-40 depend from claim 35, claims 43-47 depend from claim 42, and claims 49-50 depend from claim 48, the same distinctions between Dunham and the claimed invention in independent claims 1, 8, 14, 19, 26, 32, 35, 42, and 48 apply for these claims. Additionally, claims 2-6, 9-13, 15-16, 20-24, 27-31, 33-34, 36-40, 43-47 and 49-50 claim other additional combinations of features not suggested by Dunham. Consequently, it is respectfully urged that the rejection of claims 1-6, 8-24, 26-40, 42-50 under 35 U.S.C. § 102(e) have been overcome, and such a notice is respectfully requested.

## **II. 35 U.S.C. § 103, Obviousness**

The Office Action has rejected claim 7, 25, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Dunham in view of Office Notice. This rejection is respectfully traversed.

With regard to claim 7, the Office Action states the following:

However, Dunham does not teaches as per claim 7, the method of claim 1, wherein the application is one of a word processor, a spreadsheet program, an email program, or a browser.

Office Notice is taken; it is obvious to one ordinary skill in the art to modify the method of Dunham to add wherein the application is one of a word processor, a spreadsheet program, an email program, or a browser in order back-up different types of data for later use.

Office Action dated 10/05/2004, page 9.

Claims 25 and 41 recite similar features as claim 7 and were rejected for similar rationale. Inasmuch as base claims 1, 19, and 35 include elements not shown or described in claim 7, 25, and 41, the same distinctions between Dunham and the claimed invention in claims 1, 19, and 35 apply for claims 7, 25, and 41. Moreover, if an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, claims 7, 25, and 41 are non-obvious as Applicants have already demonstrated base claims 1, 19, and 35 to be in condition for allowance. Applicants respectfully submit that claims 7, 25, and 41 are also allowable, at least by virtue of their dependence on an allowable base claim.

Therefore, the rejection of claims 7, 25, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Dunham in view of Office Notice has been overcome, and such a notice is respectfully requested.

### **III. Alleged Double Patenting**

The Office Action rejects claims 1, 8, 9, 10, 14, 19, 26, 27, 28, 35, 42, 43, 44, and 48 under the judicially created doctrine of obviousness-type double patenting. As suggested by the Office Action, a Terminal Disclaimer in compliance with 37 CFR 1.321(c) is filed herewith disclaiming any extension of term beyond the term of U.S. Patent Application Serial No. 09/886,251 which is owned by International Business Machines Corporation, assignee of the present application. Therefore, Applicants respectfully request withdrawal of the rejection of claims 1, 8, 9, 10, 14, 19, 26, 27, 28, 35, 42, 43, 44, and 48 based on alleged obviousness-type double patenting.

### **IV. Conclusion**

It is respectfully urged that the subject application is patentable over Dunham and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: January 4, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. McDonald', written over a horizontal line.

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### **IN THE FIGURES**

Applicants have submitted proposed corrections to the drawing labeled FIGURE 15 in red ink. These changes will be incorporated into a formal set of drawings upon approval of the proposed changes by the examiner.